IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 3111 of 2005
To
FIRST APPEAL No. 3113 of 2005
with
CIVIL APPLICATION No.9751 of 2005
To
CIVIL APPLICATION No.9753 OF 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GSRTC - Appellant(s)
Versus
SUCHITABEN W/O DECD. HARSHADBHAI PATEL & 5 - Defendant(s)

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Appearance :
MRS VASAVDATTA BHATT for Appellant
MS MITA S PANCHAL for original claimants.
RULE SERVED for Defendant(s) : 5.2.1, 5.2.2, 5.2.3,5.2.4
MR HASMUKH THAKKER for Defendant(s) : 6,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 12/02/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKIL KURESHI)

Though these appeals were placed before us along with Civil Applications for confirmation of interim relief, at the request of the learned advocates appearing for the parties, the appeals are taken up for final disposal.

2. These appeals arise out of a common judgment and three separate awards dated 9th February, 2005 passed by the Motor Accident Claims Tribunal (Aux.), Ahmedabad in MACP No.244 to 246 of 1999.

3. Facts leading to these appeals are that on 11th December, 1998, one Shri Harshadbhai Patel was travelling in his Maruti car. His four friends were also travelling in the same car. They were returning from Baroda to Ahmedabad after attending a marriage function. The Maruti car was being driven by one Shri Kanubhai Patel. At about 00.30 hours in the night, the car met with an accident when it was hit by an ST bus No.GJ-18-V-3016 driven by the driver employed by the appellant S.T. Corporation. In the accident, Harshadbhai Patel, as well as his friends, Kanubhai Patel and Pravinbhai Patel received fatal injuries.

4. Heirs of deceased Harshadbhai Patel filed MACP No.244 of 1999 seeking compensation of Rs.50 lacs from the original opponents. Heirs of deceased Kanubhai Patel filed Claim Petition being MACP No.245 of 1999 seeking compensation of Rs.30 lacs and heirs of deceased Pravinbhai Patel filed MACP No.246 of 1999 seeking compensation of Rs.25 lacs. All the three claim petitions were disposed by the Claims Tribunal by a common judgment.

5. With respect to the cause of accident and negligence of the drivers of the vehicles involved in the accident, the Tribunal came to the conclusion that driver of the ST bus was negligent to the extent of 80 per cent in causing the accident whereas 20 per cent responsibility was fastened on driver of the Maruti car i.e. deceased Kanubhai Patel.

6. With respect to computation of compensation in MACP No.244/99, filed by hears of deceased Harshadbhai Patel, the Tribunal assessed the prospective monthly income of the deceased at Rs.20,000/-, deducted Rs.5,000/- for the personal expenditures of the deceased and calculated dependency benefits for the family at Rs.15,000/- i.e. Rs.1,80,000/- per annum. Considering that the deceased was aged about 53 years, multiplier of 8 was adopted. Total dependency benefit of the family was worked out at Rs.14,40,000 (Rs.1,80,000 x 8). To the said figure, the Tribunal added Rs.30,000 towards

conventional amount of loss to the estate.

7. With respect to Claim Petition No.245/99, filed by the heirs of deceased Kanubhai Patel, the Tribunal assessed his monthly income at Rs.15,000/-, deducted Rs.4,000/- for his personal expenditure and computed Rs.11,000/- per month as the dependency benefits for the family which came to Rs.1,32,000/- per annum. The Tribunal adopted multiplier of 9 and worked out the dependency benefit for the family at Rs.11,88,000/- which was rounded off at Rs.11,90,000/-. To the said amount, Rs.30,000 for conventional head and Rs.5,000/- for funeral expenses were added. Thus, total compensation of Rs.12,25,000/- was worked out. Since the deceased himself was held negligent to the extent of 20 per cent in causing the accident, ultimate compensation made available to the family was, therefore, reduced by 20 per cent. The Tribunal deducted Rs.2,45,000/- and awarded Rs.9,80,000/- to the family.

8. In MACP No.246 of 1999 filed by the heirs of deceased Pravinbhai Patel, the Tribunal assessed his monthly income at Rs.15,000/-, deducted Rs.4,000/- for his personal expenditure and worked out the dependency benefit at Rs.11,000/- per month i.e. Rs.1,32,000/- per year and adopted multiplier of 9 and awarded Rs.11,88,000/- towards dependency benefits. To the said sum, the Tribunal added Rs.30,000/- as the conventional amount, Rs.15,000/- under the head of pain, shock and suffering and

Rs.5,000/- as funeral expenses and rounded off the amount at Rs.12,40,000/-.

9. We have heard learned advocates appearing for the parties. Mrs.Vasavdatta Bhatt appearing for the appellant ST Corporation made submission only with respect to the computation of compensation made by the Claims Tribunal. She did not challenge before us the conclusion of the Tribunal regarding negligence of the respective drivers in causing the accident. As noted earlier, the Tribunal found that the ST driver was negligent to the extent of 80 per cent and driver of the Maruti car to the extent of 20 per cent in causing the accident. Since this factual finding is not questioned before us, we need not go into this conclusion of the Tribunal. This finding of the Tribunal regarding relative negligence of the drivers, therefore, remains unaltered.

10. With respect to the question of quantum of compensation, in all the three claim petitions, Mrs.Bhatt submitted that the same is on the higher side. She submitted that the Tribunal erred in awarding large amount of compensation though not entirely justified.

11. On the other hand, learned advocate Ms.Mita Panchal appearing for the original claimants in all the first appeals while submitting that the Claims Tribunal might have granted compensation which may appear to be somewhat on higher side, the awards do

not call for substantial modification.

12. In MACP No.244 of 1999 (related to First Appeal No.3111 of 2005), there was sufficient evidence before the Tribunal to assess Rs.20,000/- per month as the prospective income of the deceased. The deceased was employed in Ahmedabad Electricity Company with the monthly salary of Rs.20,000/-. Though the claimants sought to suggest that he also had other source of income, the Tribunal rightly discarded such averments. However, there was documentary evidence on record to suggest that he was earning approximately Rs.20,000/- per month. In the facts of the case, however, we find that the Tribunal erred in deducting only one-fourth of the monthly income of the deceased for his personal expenditure. Considering the size of the family and also considering that the deceased was placed on a fairly high income bracket, we find that instead of deduction of Rs.5,000/- per month for the personal expenditure, an amount of Rs.6,500/- per month would be justified. Ordinarily also, the courts have been accepting the principle of one-third deduction for personal expenditure of a deceased person. Thus deducting Rs.6500/- per month from the monthly income of the deceased of Rs.20,000/-, an amount of Rs.13,500/- would be left for the benefit of the family per month i.e. Rs.1,62,000/- per year. Considering the age of the deceased, multiplier of 8 as accepted by the Tribunal is left unchanged. Loss of dependency benefits for the family would be worked

out to Rs.12,96,000/- (Rs.1,62,000 x 8) rounded off at Rs.13 lacs. To this, we may add Rs.25,000/- towards conventional amount under the head of loss to the estate, Rs.15,000/- towards loss of consortium and Rs.5,000/- for funeral expenses. The total compensation payable to the claimants would, therefore, work out at Rs.13,45,000/- instead of Rs.14,75,000/- awarded by the Claims Tribunal.

13. Regarding Claim Petition No.245 of 199l (related to First Appeal No.3112 of 2005), we find that there was sufficient justification before the Tribunal to accept the prospective income of the deceased at Rs.15,000/-. The deceased at the time of his death was doing electronic business and was a regular tax payer. Income Tax returns filed for several years were also produced on record. On the basis of these returns, the Tribunal accepted prospective income of the deceased at Rs.15,000/-per month. We see no reason to disturb this figure. The Tribunal deducted Rs.4,000/- per month for personal expenditure of the deceased and worked out the net dependency benefit of the family at Rs.11,000/-. This amount also calls for no interference. Yearly dependency benefit, therefore, is maintained at Rs.1,32,000/- as adopted by the Tribunal. We, however, find that multiplier of 9 for the deceased aged 53 years on the date of accident was somewhat on the higher side. We, therefore, adopt multiplier of 8 and work out the dependency of the family at Rs.10,56,000/- (Rs.1,32,000 x 8). To this we may ad

Rs.25,000/- for loss to the estate, Rs.15,000/- towards loss of consortium and Rs.5,000/- for funeral charges. The total compensation, therefore, works out to Rs.11,01,000/-. 20 per cent thereof i.e. Rs.2,20,200/- would have to be reduced for contributory negligence of the deceased himself. The heirs of the deceased, therefore, would receive a total compensation of Rs.8,80,800/- from the appellant ST Corporation.

14. With respect to MACP No.246/99 (related to First Appeal No.3113 of 2005), we find that the deceased was employed as Electrical Supervisor with AEC. He also had a valid degree in his field. Though his monthly income from the record was reflected at Rs.15,000/- per month, considering the experience and qualification, he had sufficient opportunities to be gainfully employed even after retirement. Considering these aspects of the matter, we assess his prospective income at Rs.16,000/- per month. The Tribunal, in our opinion, however, erred in deducting only one-fourth of the income of the deceased for his personal expenditure since there were only three other family members dependent on him. We, therefore, find that a sum of Rs.5,000/- per month (i.e. almost one-third of the prospective income of the deceased) should be deducted for his personal expenditure from the income of the deceased. That would leave monthly dependency benefit at Rs.11,000/- i.e. Rs.1,32,000/- per annum. Here also we find that the deceased was aged about 53 years and

appropriately multiplier of 8 should have been adopted. Thus the dependency benefits for the family would be Rs.10,56,000/- (Rs.1,32,000 x 8). To this we may add Rs.25,000/- for loss to the estate, Rs.15,000/- for loss of consortium and Rs.5,000/- for funeral expenses. Since it has come on record that the deceased survived for a few days before his death, direction of the Tribunal for payment of Rs.15,000/- for pain, shock and suffering is left unchanged. The total compensation for the family would, therefore, come to Rs.11,16,000/-.

15. To the above computation of compensation, Ms.Mita Panchal for the original claimants has given her consent.

16. In the result, all the three appeals are partly allowed and the awards are modified to the above limited extent.

17. It is stated by learned advocate Mrs.Bhatt for the appellant ST Corporation that part of compensation awarded by the Claims Tribunal has been deposited by the ST Corporation before the Tribunal in different petitions. Admittedly, however, there is short-fall. The appellant ST Corporation shall deposit the remaining amounts of its share of compensation to be paid to the claimants with interest as provided by the Claims Tribunal and proportionate costs within a period of one month from today. Upon deposit of such amounts, the Claims

Tribunal shall pass appropriate order as regards investment/disbursement.

18. Since the appeals are disposed of, Civil Application for stay also stand disposed of.

(M.S.Shah, J.)

(Akil Kureshi, J.)

(vjn)